(1957) 04 AP CK 0003

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1165 of 1957

Tallapragada Pala Sankara Rao APPELLANT

Vs

Municipal Council, Masulipatam RESPONDENT

Date of Decision : 11-04-1957

Acts Referred:
Government of India Act, 1935 — Section 2, 290

Citation : AIR 1958 AP 73

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : V. Pardhasaradhi, for the Appellant; M. Seshachelapathi and M.V. Sreenivasa Rao, for the Respondent

Judgement

Satyanarayana Raju, J.—S.A. No. 1165 of 1954. The plaintiff is the appellant in this Second Appeal which arises from a judgment of the Subordinate Judge, Masulipatam.

2. The appellant is the owner of the house described in the plaint schedule which is situated. in French Loge at Chilakalapudi, popularly known as Frenchpet. The respondent is the Municipal Council, Masulipatam, represented by its Executive Authority.

3. The appellant has brought the action in the District Munsiff''s Court, Masulipatam, for a declaration that the respondent is not entitled to levy and collect any taxes on the plaint schedule property; for a permanent injunction restraining the respondent from levying any further taxes thereon and for other incidential reliefs. He has averred that the French Loge or Frenchpet was formerly under the sovereignty of the French Republic; that it was never included in the Municipality of Masulipatam; that the procedure for inclusion provided under S. 4 of the District Municipalities Act was not complied with; that there were no proper, legal and valid notifications and resolutions under Ss. 87 (3) and 80 of the District Municipalities Act and that therefore the respondent was not entitled to levy the property tax.

4. The Municipal Council, Masulipatam contended inter alia that the French Loge was part and parcel of the Masulipatam town, that it was so declared by the Secretary of State for India as early as 1935; and that the provisions of the District Municipalities Act were validly applied to the appellant''s property.

5. The District Munsiff and on appeal, the Subordinate Judge of Masulipatam, concurrently held that Frenchpet was part of Masulipatam; that the Municipality had the right to levy the tax; that it had also followed the proper procedure in levying the tax and dismissed the suit. In so holding, the lower Courts relied upon the decision in The Masulipatnam Municipal Council Vs. Movvachandrika Mahalakshmamma,), in which identical contentions were repelled.

6. In the year 1935 doubts arose as to whether the British Indian Court at Masulipatam had jurisdiction to try offences which were committed in Frenchpet. On the 5th of March 1935 a declaration was made by the Secretary of State for India that His Majesty''s Government regarded the Loge at Masulipatam as part of the territories of the British Crown. The Madras High Court then accepted the communication from the Secretary of State for India regarding the status of the territory in question as final and held that the area, known as Lege at Masulipatam, was part of the territories under the dominion of the British Crown.

7. On the 23rd of March 1948 was made by the Governor-General acting under and in pursuance of the powers conferred on him by S. 290 of the Government of India Act, 1935. as adapted by the Indian (Provisional Constitution) Order of. 1947. the Madras (Enlargement of Area and Alteration of Boundaries) Order, 1948. It ran thus:

Whereas by S. 290 of the Government of India Act. 1935, as adapted by the Indian (Provisional Constitution) Order, 1947, it is provided that the Governor-General may by order increase the area, and alter the boundaries of any province and may make such provision as the Governor-General may deem necessary or proper for any supplementary, incidental or consequential matters :

And whereas in accordance with the provisions of the said section, the Governor-General has ascertained the views of the Government of the Province of Madras, both with respect to the proposal to make the order and with respect to the provisions to be inserted therein:

Now, therefore, in exercise of the powers conferred on him by the said section and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following orders :

1. This order may be cited as the Madras (Enlargement of Area and Alteration of Boundaries) Order, 1948.

2. The areas Specified in the Schedule to this order which were known as the French Loge at Masulipatam and Calicut, are hereby declared to be included in the territories of the Dominion of India and shall be deemed always to have been included in the said territories.

3. The said areas shall form part of the province of Madras and shall be deemed always to have formed-part of the said Province and the boundaries of the said Province shall be deemed always to have been so altered as to comprise within them the said areas.

4. (i) The area comprised in the Loge at Masulipatam shall form part of Bandar town in Kistna District... and the said areas shall be administered accordingly.

(ii) All enactments for the time being in force in any of the said towns and all notifications, orders, schemes, rules, forms and by-laws issued, "made or prescribed under such enactments and for the time being in force in any of the said towns shall extend to and be in force in and shall always be deemed to have extended to and to have been in force in the area included in that town by the preceding paragraph.

8. In Item I of the Schedule appended to the Order the boundaries of the Loge at Masulipatam were given. This order was intended to be conclusive of the then existing de facto inclusion of Frenchpet in the territory of the Indian Dominion and to set at rest all doubts which had arisen in the matter.

9. It is no doubt true that historically Frenchpet was for a long time under the sovereignty of the French Republic. Admittedly however, even by the year 1935, the French Republic claimed no longer any sovereignty over the territory. By then it was part of British India which was under the suzerainty of the British Crown. That fact was well recognised and there could be no dispute about it.

10. Mr. Parthasarthi, learned counsel for the appellant has contended in this appeal that prior to the Indian Independence Act of 1947. India was part of the British Empire and was a dependency, that in or about the year 1934 when Frenchpet was ceded to the British Indian Government, it had no power to acquire foreign territory, that even after the Independence Art was passed by the British Parliament in 1947, India was a Dominion and it had not all the attributes of a sovereign state and could not acquire foreign territory.

11. According to Salmond States are of two kinds, either independent or dependent. An independent or sovereign state is one which possesses a separate existence, being complete in itself, and not merely a part of larger whole to whose Government it is subject. A dependent or non-sovereign State, on the other hand, is one which is not thus complete and self-existent, but is merely a constituent portion of a greater state which Includes both it and others, and to whose Government it is subject.

12. Until the Independence Act of 1947, in and by which India became a Dominion, it might fairly have been regarded as dependent and as merely part of the British Empire, though possessed of wide powers of Self-Government. The argument that India being then a dependency, could not acquire foreign territory, involves a fallacy, if it is remembered that it was a part of the British Empire over which the British Crown exercised full sovereignty. The British Crown was

exercising absolute sovereignty over the territories which were comprised in and were part of British India and undoubtedly, the British Crown, as a sovereign power, could acquire territory by cession. In this context it is well to remember the principle laid down in a long catena of cases, all of which were reviewed in Secretary of State v. Rustam Khan, AIR 1941 PC 64 (B) that

when a territory is acquired by a sovereign state for the first time, that is an act of state. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same.

13. As pointed out by Salmond in his classic on Jurisprudence, the territory of a state is that portion of the earth''s surface which is in its exclusive possession and control. It is that region throughout which the state makes its will permanently supreme and from which it permanently excludes all alien interference. By 1935 Frenchpet was part of the territory of India over which the British Crown made its will supreme and from which all alien interference was excluded. The transfer of the territory to India by the French Republic was an accomplished fact which was accepted as such both by the French Republic and the British Crown.

14. It may be stated in passing that we are concerned in this appeal only with the legality or otherwise of the levy of tax on the appellant''s property by the Municipality during the year 1948-49 at a time when admittedly India was a dominion.

15. It is really unnecessary to enumerate all the steps which preceded the attainment by India of the status of a Dominion. On the 18th of July 1947 was enacted the Indian Independence Act (10 and 11 Geo. VI, C. 30) by the British Parliament making provision for the setting us in India of two independent Dominions as from the 15th day of August 1947, to be known respectively as India and Pakistan. Section 2of the said Act defined the territories of the New Dominions. The material portion of that section read thus :

2. TERRITORIES OF THE NEW DOMINIONS;

1. Subject to the provisions of sub-ss. (3) and (4) of this Section, the territories of India shall be the territories under the sovereignty (sic) His Majesty which, immediately before the appointed day were included in British India except the territores which under sub-s. (2) of this section are to be the territories of Pakistan.

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3. Nothing in this section shall prevent any area being at any time included in or exclude from either of the New Dominions, so, however that-

(a) No area not forming part of the terrtories specified in sub-s. (1) or, as the case may be, sub-s. (2) of this section shall be included in either dominion without the consent of that Dominion: and

(b) No ares which forms part of the territories specified in the said sub-s. (1) or, as the case may be the said sub-s. (2) or which has after the appointed day been included in either Dominion shall be excluded from that Dominion without the consent of that Dominion.

By reason of the provision contained in S. 2, the territories of India have been defined to be the territories under the sovereignty of His Majesty, which, immediately before the appointed day, were included to British India. Frenchpet was included in and was part of British India before the 15th of August, 1947 which was the appointed day. Therefore it was undoubtedly a part of the territory of the Indian Dominion.

16. While conceding that the Union of India could acquire foreign territory after the 26th january, 1950, that is, after the New Constitution same into force by cession or otherwise, Mr. Parhasarathi has contended that even after the Independence Act was passed by the British Parliament in 1947, India was a Dominion and it had not all the attributes of a sovereign state the question then is: Whether the Indian Domination had not all the attributes of a sovereign state in the interregnum between 1947 and 1950?

17. Until First World War the Domination did not have the power of declaring war (sic)d making peace and had hardly any power of (sic)eaty making; on some matters, too, the power (sic) their legislatures were restricted, and legislation contravening the restrictions had to be ob(sic)ned from the Imperial Parliament. Between (sic)e two Wars most of these disabilities were removed. The Dominions Obtained a full treaty (sic)aking power, through ''new conventions whereby (sic)e Crown in making and ratifying treaties affecting the Dominions acted exclusively on the ad(sic) of Dominion concerned, and not at all the advice of the Government of the United kingdom.

18. It is doubtless true that the exact legal satus of a dominion was nowhere statutorily fined. The Imperial Conference held in 1928 (sic)opted a resolution defining the relationship (sic)er se of the United Kingdom and the Dominions and that resolution was given effect to in the Statute of Westminster passed by the British parliament in 1931. Thereafter it was accepted that with the United Kingdom "they are equal status, in no way subordinate to one another (sic) any respect of their domestic or external (sic)aire, though united by common allegiance to the own and freely associated as members of the British Commonwealth of Nations."

19. The recitals in the preamble of the (sic)tute of Westminster 1931. after referring to (sic) reports of the Imperial Conferences held in (sic) years 1936 and 1930. affirm that no law there (sic)er made by the Parliament of the United King (sic)n shall extend to any of the said Dominions (sic)part of the law of the said Dominion, other (sic)e than at the request and with the consent of (sic)

Dominion.

20. The statute of Westminster 1931 removed all restrictions on the legislative competence of the Dominions and with the acquisition of treaty-making power, the Dominions obtained independent sovereign status. It was thereafter recognised that a Dominion was not bound by a (sic) made in the name of the Crown to which it had not assented and which it had not ratified, Similarly no Dominion would be regarded as under any obligation to assist in a war without its consent.

21. After the Independence Act of 1947, India became a full-fledged dominion with all the attributes of a Sovereign State. The Independence Act of 1947 and the transfer of power on August 15, 1947, enabled the Constituent Assembly of India to proceed with the task of Constitution-making as a sovereign body. The Constituent Assembly eventually decided that India should be a sovereign Independent Republic.

22. But what is stated by Mr. Parthasarathi is that despite the advance of the Dominion to international status, no treaty in the full sense of that term could be concluded save under full powers granted by the King on the advice of the Imperial Government and that no treaty could become operative without the ratification of the King which again was accorded by the advice of the Imperial Government, formally signified in each case by the counter-signature of the Secretary of State. Whatever ''legal theories might have been advanced as to the capacity of a Dominion to enter into a treaty or to make war without the formal approval of the King, it was recognised by all constitutional writers that the Dominions had all the attributes of Sovereign States, both in the international sphere and to the internal sphere.

I am unable to accede to the contention of the learned counsel for the appellant that the Dominion of India as it emerged after the Indian Independence Act of 1947 Had not the attributes of a sovereign State.

23. If I am right in my conclusion that French pet was part of the Dominion of India and the Madras State, as it then existed, the question is, did the provisions of the Madras District Municipalities Act apply to the area comprised in the former Frenchpet. This was elaborately considered by Mr. Justice Satyanarayana Rao in The Masulipatnam Municipal Council Vs. Movvachandrika Mahalakshmamma,) and I find myself to agreement with the conclusion reached by him.

24. It is not the contention of the appellant that the property tax was not validly levied by the Masulipatam Municipality before French pet became a part or Masulipatam town. If the property tax was properly levied by the Municipality and of this area was included within the Municipal Limits, it automatically follows that all the laws which were applicable under the District Municipalities Act to Masulipatam will equally apply to the area which has been added to the Municipality. No fresh notifications or fresh resolutions are required. The

contentions raised by the learned counsel for the appellant cannot therefore be accepted.

25. In the result the appeal falls and is dismissed with costs. No leave.

